MEMORANDUM

DATE: January 30, 2007

TO: Ms. Sharon L. Summers, DMMA
Policy and Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 10 DE Reg. 1117 [DMMA Proposed LTC Transfer of Assets Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to adopt some discrete changes to its transfer of asset standards. The amendments are designed to achieve conformity with the attached Section 6016(a)(b) of the Deficit Reduction Act of 2005. Background is provided in both the "Summary of Proposals" section of the regulations and the attached analysis of DRA Section 6016(a)(b) from the National Health Law Program (NHeLP). The proposed regulation was published as 10 DE Reg. 1117 in the January 1, 2007 issue of the Register of Regulations. SCPD does not have any objection to adoption of the proposed regulation based on the following analysis.

First, states are no longer allowed to "round down" or disregard fractional periods of ineligibility. The NHeLP analysis provides the following example of the effect of the DRA in this context:

> For example, if an individual makes an $11,000 transfer for less than fair market value during the look back period in a state with a $4,000 average monthly cost of nursing facility care, the resulting quotient is 2.75. Under the old rule, some states simply "rounded down" the penalty to two months, disregarding the remaining .75 (roughly three weeks) of the quotient. However, states must now impose the fractional period of ineligibility.

Second, for ease of administration, states may combine multiple fractional transfers and treat them as a single transfer. The NHeLP analysis provides the following illustration:

> Assume an individual in a state whose average monthly cost of nursing home care is

$4,000 makes a $3,000 transfer in each of four consecutive months during the look-back period. Without combining the transfers, the state would have to impose four different penalty periods of .75 months ($3,000 ÷ $4,000 = .75). By combining them, the state may simply impose a penalty of three months ($3,000 x 4 = $12,000; $12,000 ÷ $4,000 = 3).

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulations.

cc: Mr. Harry Hill
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&l/10reg1117 dmma-ltc assets 1-07